



CCOC Communicator

Montgomery County Commission on Common Ownership Communities
December 2002

County Exec Urged to Slow Stormwater Program Start-Up

On behalf of the CCOC, Chair Arlene Perkins has urged the County Executive to prevent tax sales of non-residential common ownership community properties for non-payment of the new Water Quality Protection Charge. That charge appeared on property tax bills for the first time this year to fund the new Stormwater Management Program. However, some communities have not received tax bills and may not be aware of it.

Perkins described four areas that could result in tax sales in a letter to the County Executive. These four areas are not likely to be an issue for communities that employ professional management or have frequent contact with their legal counsels. There are, however, many small self-managed associations that do not enjoy either of these information resources. They may only learn for the first time when they become aware that a parcel of their community is being auctioned at a tax sale.

The first of the four areas of concern is the fact that the tax records do not always have current names and addresses of the persons who should receive the tax bill on behalf of each community. While each community is always responsible for making sure this information is up-to-date, many have forgotten simply because no tax bills were being sent to their communities in past years. (see **Stormwater Implementation**, pg. 3)



1st Open House Huge Success

The CCOC held its first annual Open House on Wednesday evening, September 25th, in the Council Office Building. More than 140 guests enjoyed a buffet of food and beverages before hearing a few words about the Commission.

CCOC Chair Arlene Perkins welcomed everyone and introduced County Executive Douglas Duncan, who praised everyone for their service to their communities. He also spoke about the new Stormwater Management Program and the benefits it can bring to common ownership communities.

Mr. Duncan was followed by Commission members who explained the roles of the Education and Legislative Committees and a detailed explanation of the Commission's procedures for handling and resolving complaints from common ownership communities and their owners.

Commission Member Aids Sniper Victim's Family

Many people were acquainted with one of the sniper victims, or at least their family. As recently reported in the *Washington Post*, CCOC Commission member and former chair Larry Gaffigan was personally connected to two of the Montgomery County victims. That personal acquaintance enabled him to facilitate an act of incredible generosity in the midst of horrible tragedy.

Gaffigan was in the County police station seeking information about the shooting of his friend, James D. Martin. While he was there, he learned that Sarah Ramos had also been shot and killed while sitting on a bench at Leisure World. Sarah was his children's nanny and the sister of the executive assistant at his management company in Silver Spring.

Although stunned by the murder of two people close to him, Gaffigan realized that some good could come from these two tragedies. He knew that Sarah Ramos' husband, Carlos Cruz, had recently come from El Salvador, and had been unable to find a steady job, partly because he didn't own a car. With the death of his wife, Cruz would now be the sole parent of their seven year-old son, Carlos, Jr. Gaffigan also knew James Martin had owned an Chevy Blazer.

Gaffigan approached Martin's family with the suggestion that they could help another victim's family by donating Martin's Blazer to Cruz, and they agreed. During his eulogy at Ramos' funeral, Gaffigan announced the donation and said, "If this thing had to happen anywhere, at least it happened in Montgomery County, a place where people step forward for each other."

Contributions are needed to aid the families of all the sniper victims. Your contribution can be mailed to:

The Victims' Rights Foundation
ATTN: Sniper Victims' Fund
814 West Diamond Avenue, Suite 200
Gaithersburg, Maryland 20878.

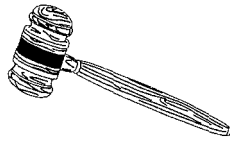
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Howard J. Cihak, CMCA®, PCAM®, Editor

From the Chair ...

A Very Good Yearby Arlene Perkins, *Chair, CCOC*

It was a very good year. As I look back, I am very pleased with the Commission's accomplishments. The **Communicator** has been published three times this year, and we plan to bring it to you four times next year. We developed an FAQ brochure on elections, a step-by-step pamphlet to help you prepare for a panel hearing, and held an Open House that was our first chance to meet face-to-face with many of you and hear your concerns. We appreciated that time with you and look forward to doing it again next year. We're now working on new educational endeavors for 2003, and we'll keep you informed through the **Communicator** as they become available.

As this calendar year comes to a close, the terms of several Commissioners are also ending. These special people have volunteered their time and energy to help the Commission so it can assist Montgomery County common ownership community owners and their governing bodies to become more aware of their rights and obligations. These Commissioners have served as committee members, some have chaired the Commission itself, and all have served on dispute resolution panels. We thank them for their service to our community and wish them well in their future endeavors. They are:

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|-------------------------|---|
| Lawrence Gaffigan | Past CCOC Chair; Member, Education Committee |
| Nadene Neel | Vice Chair, CCOC; Member, Education Committee |
| Richard Price | Past CCOC Chair; Chair, Legislation Committee |
| Richard Skobel | Member, Education Committee |
| Leesa Weiss | Chair, Education Committee; Editor, "CCOC Communicator" & the "FAQ" Brochures |

As my term as CCOC Chair comes to a close, please know it was an honor and a rewarding experience to have been able to serve the residents of Montgomery County. I want to thank the members of the Commission for all their support and guidance, and I look forward to continuing as a member of the Commission for the next two years.

**Commission Statistics**

The Montgomery County Commission on Common Ownership Communities (CCOC) was established in 1990.

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|---|---------|
| Registered common ownership communities in the County | 731 |
| Total units in registered communities | 107,176 |
| Disputes currently filed and in process | 67 |
| Hearing decisions handed down in the past 12 months .. | 13 |
| Disputes filed and closed since 1996 | 239 |
| Hearing decisions handed down since 1996 | 77 |
| Hearing decisions appealed since 1998 | 7 |
| Hearing decisions overturned on appeal since 1998 | 0 |

CCOC Hearing Decisions

The primary mission of the CCOC is to provide a means of resolving disputes between common ownership communities and their owners. If a dispute cannot be mediated by the CCOC staff, and the Commission decides it falls within its jurisdiction, then the dispute is referred to a three member panel for a hearing. One member of the panel must be an owner in a common ownership community, and the panel is chaired by an attorney volunteer.

Case numbers ending in "-0" were complaints filed by owners, and those ending in "-G" were filed by community governing bodies. These abstracts of recent cases should not, by themselves, be viewed as precedents. Each case is decided on the basis of specific facts, including the community's governing documents. Cases should be read in their entirety to learn the full context of the complaints and the resulting decisions.



**Case No. 541-0: Use of common area parking;
Front yard basketball goal;
Charging for retrieval of records**

The Complainant argued they had the right to use common area overflow parking as well as the right to store a portable basketball goal in their front yard of their single family home, and that the Respondent was preventing them from examining the records of the community.

The Respondent claimed the authority to prohibit use of the overflow parking and storage of portable basketball goals in the front yard, as well as charging its costs to retrieve and copy original records as a reasonable way to allow access to records.

It was established that the Respondent had not adopted rules governing the use of overflow parking. It was also established that the governing documents prohibited the storage of items such as portable basketball goals in the front yard.

The Panel did not agree with the Respondent's method of giving access to records wherein the Respondent would retrieve the requested records, copy them, and charge the Complainant for the cost of retrieval and copying. The Panel held that the Complainant had the right of access to original records and should not be charged for any costs other than copying and a reasonable amount of related staff time.

Decision - 7/24/02: The Panel stated there was no rule or regulation prohibiting use of overflow parking, and ordered Respondent to give the Complainant direct access to the records without charge except for reasonable costs related to copying and staff time for removing and restoring the records. The Panel also ordered the Complainant to cease storing the basketball goal in the front yard of their home. *An appeal is pending in this case.*



**Case No. 502-0: Assignment of parking spaces;
Failure to enforce restrictions**

The Complainant said the Respondent had assigned a parking space in the community's parking lot in an unreasonable manner and failed to enforce provisions in its governing documents that specifically prohibited taxicabs from parking in the community's lot.

Respondent argued the parking space assignments were necessary to accommodate a handicapped resident, and that it did not act against taxicabs because it was in the process of developing a comprehensive parking and enforcement policy.

It became apparent during the hearing that the parking space assignment plans had not been recorded in the Homeowner Association Depository, and were therefore unenforceable. The Respondent conceded that taxicabs were commercial vehicles and ought to have been banned. The Panel pointed out in its decision that it did not have the authority to tell the Respondent how to devise a parking assignment plan, but that any plan would have to meet the reasonableness test set forth in *Kirkley v. Siepelt*, 212 Md 127 128 A.2d 430 (1957), namely whether "reasonable minds would or would not differ as to the manner in which the Association has assigned the parking spaces." In the matter of not acting to prohibit taxicabs because of the delay in developing a parking policy, the Panel felt that by the date of the hearing more than enough time had passed for such a policy to have become an accomplished fact.

Decision - 9/6/02: The Panel declared the Respondent's space assignment unenforceable until it was recorded in the Maryland Homeowners Depository. The Respondent was also ordered to make a good faith reassessment of the second assignment of parking spaces. Finally, the Respondent was ordered to enforce its restrictions against commercial vehicles or properly adopt rules that would permit the parking of such vehicles.



Case No. 540-0: Common area basketball goal

The Complainant sought restitution for a basketball goal they installed in the common area and which was removed and destroyed by the Respondent. Complainant also sought access to Respondent's records which had been denied.

The Respondent admitted error in not providing access to the records and agreed to do so. The basketball goal was originally installed by the Complainant while serving on the Association's board of directors. A subsequent board declared the basketball goal a nuisance and ordered it removed. When the Complainant failed to do so, claiming that notice was never received, the board proceeded to remove the goal and dispose of it, becoming liable for damages.

Decision - 9/20/02: The Panel declared that Respondent has the authority to prohibit activities it considers to be a nuisance. However, the Complainant does not have the right to place a basketball goal on the common area. The Respondent must pay a specified sum to the Complainant as restitution for the disposed basketball goal.



**Case No. 544-0: Unequal rules enforcement;
Inadequate notice of meetings;
Closed board meetings**

The Complainant sought an order to force the Respondent to refrain from selectively enforcing its rules, to invalidate a previous enforcement against the Complainant, to provide proper notice of all of Respondent's annual and board meetings, and to refrain from conducting closed meetings of the board of directors.

No representative of the Respondent appeared at the hearing. However, a number of documents were submitted in answer to the Complainant's discovery. The Panel concluded from those documents and the Complainant's testimony that the Complainant's enforcement issue was without substance. It appeared that the letter sent to the Complainant, which led to the filing of this complaint, did not state that a violation had taken place or that any enforcement action was being taken by the Respondent. Moreover, the Panel stated that Complainant's claim of selective enforcement did not deal with actual or alleged violations similar to his own situation, but with a broad range of completely dissimilar situations.

In the matter of proper notice of meetings and conducting open meetings, the panel concluded that the failure of the Respondent to attend the hearing constituted a default, and that the available evidence indicated that the Respondent had failed to comply with its own Bylaws, as well as the Maryland Homeowners Association Act.

Decision - 9/20/02: The Panel ordered that henceforth the Respondent must comply with its Bylaws and the Maryland Homeowners Association Act with regard to scheduling and notifying homeowners of the Respondent's meetings. The Panel also ordered the Respondent to submit two reports at specified future dates that documented that compliance, and that the reports must be signed by the board members.



Stormwater Implementation (from pg. 1)

Another concern is the possibility that some developers did not correctly assign parcels containing stormwater management facilities to the adjacent community that believes those parcels to be part of their property. Perkins recommended that the County develop a process for notifying common ownership communities that they may be responsible for associated nonresidential property.

A third concern is the fact that many communities, especially very small, self-managed ones, will not have sufficient funds to pay the new Water Quality Protection Charge appearing on their tax bills. In some communities increases in their assessments must be approved by a vote of the entire ownership, a process that requires setting a meeting date and developing a quorum before any increase can be legally implemented. In some cases, it may be necessary for the community to wait until its next annual meeting before this can be done. Perkins expressed the Commission's view that the County should have a leniency policy for dealing with those communities that can demonstrate a hardship in meeting this new obligation.

In light of these concerns, the Commission recommended that the County proceed to a tax sale for associated nonresidential properties only after appropriate efforts are made to assure the affected communities have been notified and a reasonable time has passed in which their deeding and funding issues could have been addressed.

Perkins concluded the letter stating that a lot of work had gone into developing the Stormwater Management Program, but more was still needed if the County was to prevent lost revenue and unintended displacement of property rights.

CCOC Commissioners



RESIDENTS (of common ownership communities)

Margaret Bruce
Arlene Perkins
Chair, CCOC
Richard Price
Chair, Legislative Committee
Russell P. Subin
Leesa N. Weiss
Dawn Guynn-Werking

PROFESSIONALS (associated with communities)

Howard Cihak, CMCA®, PCAM®
Chair, Education Committee
Richard J. Leeds, CMCA®
Michael Maloney, AMS®
Nadene L. Neel
Vice Chair, CCOC
Richard Skobel, CPM®
Dean Stoline, Esquire

REAL ESTATE SALES AND DEVELOPMENT

Lawrence Gaffigan, CPM®
Harold H. Huggins, CPM®
R. Barry Wertlieb, CPM®

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- ✧ **How To Legally Maximize Investment Yield**
- ✧ **Plumbing System Failures & Toxic Mold - In Place Pipe Restoration - A Case Study**
- ✧ **Insurance / Risk Management Program**
- ✧ **Can You Be Personally Liable as a Board Member?**
- ✧ **Electronic Communications - Implications for Associations**
- ✧ **Proven Best Practices for Community Associations**
- ✧ **Yes You Can Influence City Hall**
- ✧ **Creating and Amending Legal Documents**
- ✧ **Water Biology and Management Practices - Ponds, Storm Water Management, Streams, and More**
- ✧ **Emergency Preparedness: Are You Ready?**

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DEPARTMENT OF HOUSING
AND COMMUNITY AFFAIRS
Commission on Common Ownership Communities
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Rockville, Maryland 20850

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**Washington Metropolitan Chapter
CAI Expo Registration Form**

DATED MATERIAL